

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONS No.6038 and 6040 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

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SHREE TADHAVAD TELIBIYA UTPATHAK SAHAKARI MANDALI LTD.

Versus

REGISTRAR CO OP SOCIETIES

Appearance:

1. Special Civil Application No. 6038 of 2002
MR SN THAKKAR for Petitioner No. 1
MR HC PATEL, Ld. AGP for Respondent No. 1-2
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CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 17/07/2002

ORAL JUDGEMENT

1. Rule. Mr.H.C.Patel, learned AGP appears and waives service of rule on behalf of the respondents. With the consent of the parties, these matters are taken for final hearing.

2. The present petitions are preferred by the petitioners against the order dated 21-6-2002 Annexure "D" to the petition passed by the Registrar, Cooperative Societies, Gujarat State, Gandhinagar, whereby the order dated 8-1-2002 passed by the District Registrar of revival of the Society is cancelled.

3. Since in both the petitions common questions are involved, they are dealt with together.

4. Mr.S.N.Thakkar, learned Counsel for the petitioners submitted that the order has been passed in breach of principles of natural justice in as much as the matter was adjourned to 13th May, 2002 and on that very day the advocate of the petitioners was present for making submissions and since the Registrar was not available and he was busy with the meeting, the advocate of the petitioners was told that the next date would be intimated to the petitioner Societies. Mr.Thakkar submitted that instead of intimating the next date, the order has been received by the Societies and, therefore, the order is in breach of the principles of natural justice and, therefore, it deserves to be quashed and set aside.

5. On behalf of the Registrar, Cooperative Societies, Mr.H.C.Patel, learned AGP submitted that the proceedings and the file shows that on 13-5-2002, the advocate of the petitioners had not remained present and, therefore, the officer had proceeded ex-parte and the order has been passed and, therefore, he submitted that there is no breach of principles of natural justice. Mr.Patel also submitted that there is a statutory remedy available to the petitioners for preferring appeal before the State Government and instead of entertaining these petitions by this Court, petitioners may be directed to avail of alternative remedy.

6. Considering the rival submissions of the parties, I had called for the record and proceedings from the office of the Registrar and, prima facie, it appears that there are over-writings over the dates and more particularly the date "13-5-2002" and, therefore, there is word against word. The contention of the petitioners is that the advocate had gone for the purpose of making submissions, but the stand of the Registrar is that on 13-5-2002 the advocate of the petitioners had not remained present. I would have proceeded to rely upon the statement made in the order, but since in the original proceedings there are over-writings over the

dates especially on the date of 13th May, 2002 and there is no counter-affidavit filed on behalf of the Registrar, I am of the view that the matter has proceeded ex-parte and, therefore, the following directions would meet with the ends of justice.

6.1 The Registrar, Cooperative Societies shall give a fresh opportunity of hearing to the petitioners pursuant to the show-cause notice dated 22-4-2002 and such opportunity shall be given within a period of one month from today.

6.2 The petitioners or their advocate shall positively remain present for the purpose of making submissions and after hearing the petitioners or their representatives, the Registrar shall pass a fresh order, without being, in any manner, influenced by earlier order dated 21-6-2002 and such order shall be passed within a period of two months from today or one month from the date of hearing the petitioners, whichever is earlier.

6.3 In view of the aforesaid directions, the order dated 21-6-2002 shall remain suspended until the Registrar passes the fresh order as indicated earlier.

6.4 As and when the Registrar passes the fresh order as indicated earlier, the order dated 21-6-2002 shall not operate and will stand substituted by the fresh order.

7. Rule is made absolute to the aforesaid extent.
There shall be no order as to costs.

17-7-2002 (Jayant Patel, J.)

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